



# The Legal Light

The J.Reuben Clark Law Society, Orange County Chapter  
November, 2004 Volume 6

## Training JRCLS Leaders Worldwide

By Don D. Sessions, Chair



Leaders from individual chapters of the J. Reuben Clark Law Societies from all over the world met at Aspen Grove in Utah in September for training. I attended along with Jeff Robinson, our Treasurer, and Jim Moss, our Liaison Committee Chair, who would also be attending the Law and Religion symposium.

We learned much.

The Lima-Peru Chapter has about 100 attorneys and they rotate weekly pro-bono projects among its members.

Two leaders of an Australian chapter attended for a second year in a row and made our trip to Provo seem just down the street.

A solitary attorney from upstate New York was thrilled to have contact with other attorneys who shared his values. He enjoyed the spring satellite broadcast with President Packer even though he was the only one attending at the ward building.

The Los Angeles Chapter has had a very active affiliate student chapter at Pepperdine with almost twenty student members. The law school contributed half of the cost of the annual dinner for the students. The Washington D.C. Chapter recently held their annual event with hundreds in attendance from their large LDS attorney base.

The members of one chapter back East are so spread out that they actually spend several hours to attend their meetings together.

The seven or eight attorneys employed by the Church and assigned to, and living in, different areas of the world shared their successes and frustrations in dealing with laws of other countries; especially when it is the Church's policy to "go in through the front door," in countries in which many leaders expect improper personal incentives.

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## Thirteenth Annual Dinner

By Stephen C. Kimball

What a wonderful evening. It was by far the best-attended event in recent years, if not in the history of our chapter. It started with a beautiful reception and the accompaniment of a four-string quartet. The quartet later enchanted the audience with a medley of songs in the middle of the program.

Our own Judge London provided comical stories about courtroom antics that left everybody in stitches. Dean Worthen of BYU Law School shared insightful comments. Chair, Don D. Sessions, emceed the event and thanked our outgoing directors and welcomed in several new directors. Craig R. Scott was the recipient for the prestigious J. Reuben Clark Award. His involvement in the community as a City Council Member and Mayor of Laguna Hills, as well as his long-standing association and involvement in the J. Reuben Clark Law Society made him a very worthy recipient.

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### EXECUTIVE COMMITTEE

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Jeffrey W. Shields - Chair-Elect (949) 724-7900  
Jeffrey A. Robinson - Treasurer (949) 752-7007  
Mark R. Watkins (714) 424-8228

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## *Thirteenth Annual Dinner - Continued...*

Our keynote speaker was John W. Walsh, the founder of the Foundation for Ancient Research and Mormon Studies



(F.A.R.M.S.) and a well-respected law professor at BYU. Professor Walsh presented an outstanding presentation about law in the New Testament. His scholarship was impeccable and his insight astounding.



Kim R. Hubbard, current President of the Orange County Bar Association, and other dignitaries were present. It was a wonderful evening enjoyed by all. Our plans for next year's event will be even more exciting.

## *Training JRCLS Leaders Worldwide - Continued...*

One of the lead attorneys for Citibank Corporation in the East coast as well as an attorney who is also an Area Representative in Oregon led a panel discussion on balancing work, home, and church.

I saw Charles Jones there, who is the Chief Justice of the Arizona Supreme Court, who will be speaking to our chapter in March. He reviewed the very beginnings of JRCLS. He was one of the first International Chairs. With its modest beginnings, they had no idea it would grow into the force that it is today.

At one of the meetings we were asked to share our meth-

ods in expanding our chapter's attendance. We were given the impression that our particular chapter was one of the trend-setting examples of all the chapters in the world. We have very enthusiastic Directors and Members. Also, we have more members of the International Board from Orange County than any other area. It was nice seeing Joe Bentley



(International Chair Elect), Marsh Tanner (Past International Chair), Doug Higham (Regional Advisor), and Sterling Brennan (Former JRCLS-OC Chair) there.

It was a very valuable experience to realize that we are part of an international organization accomplishing a great work of encouraging association and coordination between the practice of law and the practice of religion.

I learned that we who are attorneys and who share a common faith and values have special opportunities and obligations our chapter helps us realize and meet.

## ANNOUNCEMENTS

### Law Firms Seeking Lawyers

Payne & Fears LLP

Las Vegas Office

1-5 years experience helpful

Current Nevada license

not required

949-851-1100

### Law Clerk Seeking Position

Andrew B. Platt,

platt@byu.edu

# The End of All Morals Legislation?

by David P. Koch

Turner Green Afrasiabi & Arledge LLP

Last year, the Supreme Court issued its widely publicized decision *Lawrence v. Texas*, which held a Texas sodomy statute unconstitutional. The ruling generated substantial interest among commentators on both sides, but perhaps the most interesting debate arose from Justice Scalia's dissent, which stated that *Lawrence* "effectively decrees the end of all morals legislation." While the majority deemed public morality an insufficient basis to make law, Scalia quoted the Court's earlier pronouncement that "[t]he law is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated

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*"Is public morality a legitimate basis for law?"*

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under the Due Process Clause, the courts will be very busy indeed." *Lawrence v. Texas*, 539 U.S. 558, 589 (2003) (Scalia, J. dissenting) quoting *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986).

The question thus becomes: is public morality a legitimate basis for law? And is the judicial system a proper vehicle to shape society's morals?

## I. Legislation Regarding Morality

Should legislators pass laws based on public morality? Historically the answer has been "yes." Numerous laws regulate "immoral" conduct by consenting adults. Most states, for example, prohibit activities such as prostitution, bestiality, and polygamy. Each involves presumably consenting parties with no true "victim," but in each case, states ban the activities primarily because they conflict with the state's moral code. Similarly, every state bans recreational marijuana use even though proponents claim its use harms only consenting users. And Dr. Kevoorkian was convicted of murder for assisting people who asked for help ending their lives. Why? Not because innocent victims were wrongfully harmed—instead, the rationale must be that society deems it morally wrong to intentionally end one's own life.

At its core, the purpose of law is to discriminate between good and bad; between those activities that are beneficial and those that harm society. That is what legislation is designed to do, and that is what legislation has historically done. *Lawrence* and other recent decisions demonstrate a shift away from this philosophy, even as the federal Defense of Marriage Act and similar state laws continue to be passed based primarily on moral grounds.

## II. Courts and Morality

This leads to a key issue for this audience – whether the judicial system should play a role in shaping society's morals. This question comes to the fore in *Lawrence*, which several commentators describe not as a rejection of morals-based legislation but rather as an imposition of the Supreme Court's morality upon the laws governing society. In rejecting Texas' sodomy law, the *Lawrence* Court decided the law did not further a legitimate state interest sufficient to warrant intrusion upon individual's private lives. The Court did not tether its rejection of morals-based legislation to the Constitution, however; instead, it relied on its collective moral judgment to decide

that the law improperly limited a freedom that theretofore had not existed.

Other recent rulings indicate that courts will continue to reject morality as a guide for lawmaking. A Washington superior court recently ruled that marriage could not be denied to same-sex couples, explaining that "the moral views of the majority can never provide the sole basis for legislation." *Andersen & Christian v. King County*, Case No. 04-2-04964-4 SEA, (Memorandum Opinion) (Aug. 4, 2004).

But the rationale for these decisions seems subject to attack if all legislation is at its core founded upon morality. Society has made it unlawful to murder because it is wrong to deprive another person of his life. Society prohibits theft because it is wrong to deprive another person of his property. That we deem it wrong to take another's life or property is little more than a moral judgment. If morality did not guide these decisions, the "law of the jungle" would apply, and the powerful could prey upon the weak. But society has decided it functions best when certain laws guide the conduct of its citizens.

## III. Democracy and Morality

This brings us to the final issue, the role of the democratic process in shaping public morality. Social change arises from democratic action. Individuals elect legislators who represent their views, and legislators enact laws that (theoretically) represent the views of their constituents. Legislators who fail to pass laws reflecting society's will are replaced by those who do.

Under this system, laws reflecting society's morality will inevitably be put into place. If society's morality changes, so will the laws that govern society. Justice Scalia argued along these lines in *Lawrence*: "Social perceptions of sexual and other morality change over time, and every group has the right to persuade its fellow citizens that its views of such matters is best. . . . But persuading one's fellow citizens is one thing, and imposing one's view in absence of democratic majority will is something else." *Lawrence*, 123 S.Ct. at 2497.

Yet applying the reasoning of *Lawrence* and the recent Washington ruling, even overwhelmingly popular ballot initiatives such as California's Proposition 22 (defense of marriage law) could be rejected by the courts because they are based upon notions of public morality. This is a troubling turn. In essence, courts are permitted to weigh the moral choices of democracy and decide whether democracy's moral choices are right or wrong.

Whether *Lawrence* and similar recent decisions will withstand further scrutiny remains to be seen, but the tide is clearly moving away from upholding laws based on moral choices. As lawyers and citizens, we have an opportunity and an obligation to participate in the process. Voting for representatives who represent our views is an obvious first step. Actively participating in the democratic process and making our voices heard is absolutely necessary. As Edmund Burke famously stated: "All that is necessary for the triumph of evil is that good men do nothing." As members of the legal community, we play a critical role in "doing something" to ensure that our values are upheld.

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*"Is the Judicial System a proper vehicle to shape Society's Morals?"*

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*"All that is necessary for the triumph of evil is that men do nothing."*

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# J. REUBEN CLARK LAW SOCIETY

Orange County Chapter

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*“The Challenge of Discipleship in Japan – A Cultural and Legal Perspective”*



## James B. Whitesides

- Returning President of the Japan Nagoya Mission
- Former Stake President & Bishop
- JD, 1976, J. Reuben Clark Law School

### Delicious Luncheon

# November 17, 2004 @ 12:00 – 1:30pm

### - LOCATION -

Latham & Watkins (next to the Performing Arts Center)  
650 Town Center Drive, 19th Floor  
Costa Mesa, California 92626

Free Validated Parking

MCLE Credit

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## REGISTRATION

- |  |   |
|--|---|
| • PERSON(S): _____   | • TOTAL: \$ _____   |
| <input type="checkbox"/> Gold/Silver Members – \$ already paid   | <input type="checkbox"/> Bronze Members-\$15 before 11/12/04, \$20 after 11/12/04(RSVP) |
| <input type="checkbox"/> Judges/Law Students “special members” free(RSVP)  | <input type="checkbox"/> All others \$25(RSVP)  |
| • Name: _____  | • Guest: _____  |
| • Phone: (        ) _____ - _____  | • E-mail: _____   |
| • Payment By Check: Mail to Jeff Robinson – 2301 Dupont Drive, Suite 530 - Irvine, CA 92612  |   |
| • Payment By Credit Card: Fax to Jeff Robinson – (949) 752-7023 <input type="checkbox"/> Visa <input type="checkbox"/> Master Card |   |
| • Credit Card #: _____   | • Expiration Date: _____  |
| • Name On Card: _____  | • Signature: _____  |

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FAX OR POSTMARK BY NOVEMBER 12, 2004, SEATING IS LIMITED

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# "The Eleventh Annual Law and Religion Symposium at BYU"

James R. Moss, one of our Directors, attended this year's symposium on October 3-5, 2004 at BYU Law School. It was titled "Religion in the Public Sphere: Challenges and Opportunities." Participants included scholars and government officials from 39 countries. J. Clifford Wallace, Chief Judge Emeritus, U.S. Court of Appeals for the Ninth Circuit and Blandine Chelini-Pont, Director, Institute of Law and Religious History, France delivered the opening addresses on Sunday evening. During sessions on Monday and Tuesday, delegates presented papers and discussed issues ranging from the roles of government, media and the university in facilitating freedom of religion, to recent issues involving Islam, tolerance and the European Court of Human Rights. Delegates also had the opportunity in regional sessions to discuss the status of religious freedom and challenges facing their individual countries.

## CALLING ALL WOMEN ATTORNEYS

JRCLS Board Member Elizabeth Smith (U of U College of Law, 1983) would like to hear from (or of) all potential JRCLS women members. "Whether you are practicing full or part-time or not practicing currently, I would like to talk with you," said Ms. Smith, who is compiling information that can be of use to that segment of the JRCLS population. Please forward names and phone numbers or email address to Elizabeth Smith at (714) 565-7800 or [HYPERLINK "mailto:ElizabethS@smithandsmith-law.com"](mailto:ElizabethS@smithandsmith-law.com) ElizabethS@smithandsmith-law.com.

# CALENDAR

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## *November 17*

"The Challenge of Discipleship in Japan – A Cultural and Legal Perspective"

**James B. Whitesides**

## *January 19*

"Goals, Risk Taking, and Going for It"

**Peter Vidmar**, Olympic Gold Medalist & Professional Motivational Speaker

## *February 11*

JRCLS Worldwide Fireside

**Dallin Oaks**

## *March 16*

"Influencing Man's Laws with a Religious Background"

**Charles Jones**, Chief Justice of the Arizona Supreme Court

## *April 20*

"Law and Religion Symposium"

**Chapman Law School**

## *May 18*

"Teaching the Brazilian Bench and Bar"

**Judge Randell Wilkinson**, Orange County Superior Court Judge

## *July 20*

"Legal Issues Surrounding the Newport Beach Temple"

**Joseph I. Bentley**

## *September*

Annual Dinner

"The More Humorous Side of Law"

**Professor Jim Gordon**, BYU Law School, Highly Acclaimed Speaker

## *November 16*

"Balancing Work, Home and Church"

Panel Discussion; **Doug Higham, Bonna Bashaw,**

**Mark Watkins / Jim Carter and Audience**

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## MEMBER NEWS

5 new directors just joined our Board:

- Donna R. Bashaw, an Elder Law specialist with her own practice in Laguna Hills
- James P. Carter of Paul, Hastings, Janofsky & Walker, LLP, who practices employment law
- Craig L. Griffin of Connor Blake & Griffin LLP, who practices business litigation
- Paul A. Hoffman of Paul E Greenwald & Associates, who practices intellectual property and litigation
- Elizabeth Shaw Smith of Smith, Smith, & McFaul, LLP, who practices business law and estate planning

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JRCLS-OC

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